

The Administrator signed the following rule on March 6, 2008, and we are submitting it for publication in the *Federal Register*. While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming *Federal Register* publication or on GPO's Web Site. You can access the *Federal Register* at: www.gpoaccess.gov/fr/index.html. When using this site, note that "text" files may be incomplete because they don't include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 80
[EPA-HQ-2005-0036; FRL-XXXX-X]
RIN

Control of Hazardous Air Pollutants From Mobile Sources:
Early Credit Technology Requirement Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action to revise the February 26, 2007 mobile source air toxics rule's requirements that specify the benzene control technologies that qualify a refiner to generate early benzene credits. This action will allow another specific benzene control technology, benzene alkylation, in addition to the four operational or technological changes that the 2007 rule currently allows. This action also includes a general provision that allows a refiner to submit a request to EPA to approve other benzene-reducing operational changes or technologies for the purpose of generating early credits.

DATES: This direct final rule is effective on **[insert date 60 days from date of publication in the Federal Register]**, without further notice, unless EPA receives adverse comment by **[insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-2005-0036, by one of the following methods:

- <http://www.regulations.gov> Follow the on-line instructions for submitting comments.
- Fax: (202) 566-9744.
- Mail: EPA-HQ-2005-0036, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center (EPA/DC), EPA Headquarters Library, Room 3334 West Building, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be

made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-2005-0036. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an "anonymous access" system which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

For additional instructions on submitting comments, go to section 1.B of the SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Eastern Standard Time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Christine Brunner, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214-4287; fax number: (734) 214-4816; e-mail address: brunner.christine@epa.gov. Alternative contact: Assessment and Standards Division Hotline, telephone number: (734) 214-4636; e-mail address: asinfo@epa.gov.

SUPPLEMENTARY INFORMATION:

Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without prior proposal because we view this as a non-

controversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s Federal Register publication, we are publishing a separate document that will serve as the proposed rule to adopt the provisions in this direct final rule if adverse comments are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in a subsequent final rule based on the proposed rule.

Does this Action Apply to Me?

This action may affect you if you produce gasoline. The following table gives some examples of entities that may have to follow the regulations.

Category	NAICS ¹ Codes	SIC ² Codes	Examples of Potentially Regulated Entities
Industry	324110	2911	Petroleum Refiners

1) North American Industry Classification System (NAICS)

2) Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To decide whether your organization might be affected by this action, you should carefully examine today’s action and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

What Should I Consider as I Prepare My Comments for EPA?

A. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

- B. *Tips for Preparing Your Comments.* When submitting comments, remember to:
- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
 - Follow directions--The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
 - Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
 - Describe any assumptions and provide any technical information and/or data that you used.
 - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
 - Provide specific examples to illustrate your concerns, and suggest alternatives.
 - Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
 - Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Outline of This Preamble

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I. Background

The Mobile Source Air Toxics rule (MSAT2), published on February 26, 2007 (72 FR 8428), requires that refiners and importers produce gasoline that has an annual average benzene content of 0.62 volume percent (vol%) or less, beginning in 2011. (See §80.1230(a).) The rule also requires that no refiner or importer have an actual average gasoline benzene level greater than 1.3 volume percent. After achieving an actual annual average benzene level of 1.3 vol%, refiners and importers may use benzene credits to reduce their average benzene level to 0.62 vol%. Refiners may generate benzene credits for their own use or to sell to others, in two ways. Once the program begins in 2011, a refiner generates credits (known as standard credits) when its average annual gasoline benzene level is less than 0.62 vol%. Importers can also generate standard credits. Refiners may also generate credits prior to 2011.¹ These credits are called early credits. The final rule allowed for the generation of early benzene credits in any annual averaging period prior to 2011 (i.e., 2008, 2009, and 2010), as well as for the partial year period June 1-December 31, 2007. Early credits are generated on a refinery basis. In order to generate early credits, a refinery must meet several requirements:

- 1) Establish a benzene baseline based on the average benzene level of the gasoline produced at the refinery during the two-year period 2004-05. (See §80.1285.)
- 2) Make operational changes or improvements in benzene control technology that will result in real benzene reductions. (See §80.1275(d).)
- 3) Achieve an annual average benzene level at least 10% lower than its baseline level. (See §80.1275(a).)

In §80.1275(d)(1) of the MSAT2 final rule, we specified four types of operational changes and benzene control technology improvements that would allow a refinery to qualify for generating early credits if it implemented the changes after 2005 and if it also met the other related requirements. These operational changes and technology improvements are:

- 1) Treating the heavy straight run naphtha entering the reformer using light naphtha splitting and/or isomerization.
- 2) Treating the reformat stream exiting the reformer using benzene extraction or benzene saturation.
- 3) Directing additional refinery streams to the reformer for treatment as described in 1) and 2) above.
- 4) Directing reformat streams to other refineries with treatment capabilities as described in 2) above.

¹ Importers are not allowed to generate early credits because they do not have the ability to make the benzene reduction technology changes that would lower benzene levels in the gasoline pool.

We included in this list all the strategies we thought would reduce benzene and be cost-effective. The provision was intended to not allow early credit generation solely by benzene reductions achieved through ethanol blending. A refinery needs to implement at least one of the listed improvements.

The final rule did not provide a way for EPA to consider alternative means of reducing benzene, no matter how efficacious the alternative might be. Soon after the rule was finalized, it came to our attention that at least one refinery had plans to install benzene alkylation technology. Benzene alkylation is not one of the four operational or technological changes enumerated in the final rule. Although EPA regards benzene alkylation as a legitimate benzene reduction technology, we did not expect it to be used. (See the Regulatory Impact Analysis (EPA420-R-07-002, February 2007), Chapter 6, Page 36.)

II. Today's Action

We published a Questions and Answers document related to the MSAT2 program on August 16, 2007. (<http://epa.gov/otaq/regs/toxics/420f07053.pdf>) In that document, we specifically addressed benzene alkylation and indicated that benzene alkylation meets the intent of the technology requirement for early credits. As discussed in the preamble of the final rule, early credits are generated based on innovations in gasoline benzene control technology that result in real benzene reductions prior to the start of the program in 2011. (See 72 FR 8486.) The use of benzene alkylation directly results in lower gasoline benzene levels.

Today's action revises §80.1275(d)(1) to include benzene alkylation in the list of acceptable reduction operational and technological strategies. We have also included a general provision that would allow a refiner to petition EPA to use an operational or technological change that is not listed in the regulation for the purpose of generating early credits. The refiner would have to demonstrate that the benzene control technology improvement or operational change results in a net reduction in the refinery's average gasoline benzene level, exclusive of benzene reductions due simply to blending practices. The petition would have to be submitted to EPA prior to the start of the first averaging period in which the refinery plans to generate early credits. EPA expects it would act on such a petition before the end of that averaging period. The refiner would also have to provide additional information requested by EPA.

The other requirements for generating early credits are unchanged. These include submitting a benzene baseline, reducing the refinery's baseline benzene level by at least 10% in a given averaging period, and not moving gasoline or blendstock streams between refineries for the purpose of generating early credits. (See 72 FR 8486.)

III. Environmental and Economic Impact

We believe there will be no negative environmental or economic impacts of today's action. This action will allow those companies that have alternative means or strategies for

reducing gasoline benzene to request EPA approval to use them for the purpose of generating early benzene credits. Average gasoline benzene levels from such refiners will decrease faster and earlier than if they had not generated early credits, and such credits will help provide for a robust credit pool when the program starts in 2011.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action revises the February 26, 2007 mobile source air toxics rule's requirements that specify the benzene control technologies that qualify a refiner to generate early benzene credits. It allows another specific benzene control technology, benzene alkylation, to be used for the purpose of generating early credits, and allows a refiner to submit a request to EPA to approve other benzene-reducing operational changes or technologies for the purpose of generating early credits. This action is not expected to have an annual impact on the economy of more than \$100 million, nor does it raise any novel legal or policy issues. This type of action is exempt from review under 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq* because the amendments in this rule do not change the information collection requirements of the underlying rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule because this action will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of today's rule on small entities, small entity is

defined as: (1) a petroleum refining company with fewer than 1500 employees or a petroleum wholesaler or broker with fewer than 100 employees, based on the North American Industrial Classification System (NAICS); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's action simply modifies the original rule in a limited manner, and does not significantly change the original rule. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because it applies only to parties that produce gasoline.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule amends existing regulatory provisions applicable only to producers of gasoline and does not alter State authority to regulate these entities. The amendments will impose no direct costs on State or local governments. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule amends existing regulatory provisions applicable only to producers of gasoline and will impose no direct costs on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. We believe there will be no negative environmental or economic impacts resulting from today's action compared to the February 26, 2007 rule this action modifies.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final rule will be effective on **[insert date 60 days from date of publication in the Federal Register]**.

Statutory Provisions and Legal Authority

The statutory authority for the fuels controls in today’s final rule can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended. Support for any procedural and enforcement-related aspects of the fuel controls in today’s rule, including recordkeeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle fuel, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements

Dated:_____

Stephen L. Johnson, Administrator

For the reasons set forth in the preamble, 40 CFR part 80 is amended as set forth below:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545 and 7601(a).

2. Section 80.1275 is amended as follows:

- a. By adding paragraph (d)(1)(v).
- b. By redesignating paragraph (d)(2) as paragraph (d)(3).
- c. By adding paragraph (d)(2).

§80.1275 How are early benzene credits generated?

* * * * *

(d) * * *

(1) * * *

(v) Providing for benzene alkylation.

(2)(i) A refiner may petition EPA to approve, for purposes of paragraph (d)(1) of this section, the use of operational changes and/or improvements in benzene control technology that are not listed in paragraph (d)(1) of this section to reduce gasoline benzene levels at a refinery.

(ii) The petition specified in paragraph (d)(2)(i) of this section must be sent to: U.S. EPA, NVFEL-ASD, Attn: MSAT2 Early Credit Benzene Reduction Technology, 2000 Traverwood Dr., Ann Arbor, MI 48105.

(iii) The petition specified in paragraph (d)(2)(i) of this section must show how the benzene control technology improvement or operational change results in a net reduction in the refinery's average gasoline benzene level, exclusive of benzene reductions due simply to blending practices.

(iv) The petition specified in paragraph (d)(2)(i) of this section must be submitted to EPA prior to the start of the first averaging period in which the refinery plans to generate early credits.

(v) The refiner must provide additional information as requested by EPA.

(3) Has not included gasoline blendstock streams transferred to, from, or between refineries, except as noted in paragraph (d)(1)(iv) of this section.

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